

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JESSIE F. TRUITT, III,

Plaintiff,

-VS-

CARL BEAR, et al.,

Defendants.

Case No. CIV-19-474-F

ORDER


Plaintiff, Jessie F. Truitt, III, a state prisoner appearing *pro se*, commenced this civil action on May 24, 2019. In accordance with 28 U.S.C. § 636, the matter was referred to United States Magistrate Judge Suzanne Mitchell for initial proceedings. This date, Magistrate Judge Mitchell issued a Report and Recommendation, recommending that the court dismiss without prejudice plaintiff's action under Rule 41(b), Fed. R. Civ. P., for failure of plaintiff to comply with an order dated May 31, 2019, requiring plaintiff to file a completed form complaint and other required forms and documentation on or before June 21, 2019.

After the Report and Recommendation was filed of record, the court clerk received from plaintiff a “Motion to Dismiss Law Suit Without Prejudice[.]” Doc. no. 7. The court construes the motion as a voluntary notice of dismissal pursuant to Rule 41(a)(1)(A)(i), Fed. R. Civ. P. Because the notice of dismissal was filed before the opposing party served “either an answer or a motion for summary judgment,” Rule 41(a)(1)(A)(i) confers upon the plaintiff the “absolute right to dismiss without prejudice and no action is required on the part of the court.” Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003). ““Once the notice of dismissal has been filed, the

district court loses jurisdiction over the dismissed claims and may not address the merits or issue further orders pertaining to them.” *Id.* (quoting Duke Energy Trading & Mktg., L.L.C. v. Davis, 267 F.3d 1042, 1049 (9th Cir. 2001)).

Accordingly, plaintiff’s “Motion to Dismiss Law Suit Without Prejudice[]” (doc. no. 7) is construed as a voluntary notice of dismissal under Rule 41(a)(1)(A)(i), Fed. R. Civ. P., and plaintiff’s civil action is deemed **DISMISSED WITHOUT PREJUDICE** as of June 28, 2019. In light of the dismissal, the Report and Recommendation of United States Magistrate Judge Suzanne Mitchell filed June 28, 2019 (doc. no. 6) is **DECLARED MOOT**.

IT IS SO ORDERED this 28th day of July, 2019.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE